IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2337 OF 1995

Smt. Sharda Haribhau Nalawade & Ors. .. Plaintiffs.

Versus

Mr. Khanderao S. Ravate & Ors. .. Defendants

Mr. B.D.Joshi with Ms. Diwan i/b. Ms. Gauri Jadhav for Plaintiffs.

None for Defendants.

CORAM: S.K.SHAH,J.

DATE : 27th April,2006.

P.C.

1. The suit is filed for declaration that the suit property i.e. the Math and the Chawl situated at Chembur, Bombay, bearing C.S. No.1193 (1 to 11) is the private property of the Plaintiff and that the Math does not belong to a public trust i.e. a public trust registered under the Bombay Public Trust Act, 1950.

2. The Defendants have filed Written Statement. However,no one is representing the Defendants nor the

Defendants are appearing since last number of days. The suit is, therefore, being proceeded accordingly.

3. The case of the plaintiff is that the suit property originally belonged to Narayan Ravate. Narayan Ravate gifted that property under a Gift Deed dated 4.10.1917 in favour of Sidhibai, the grandmother of plaintiffs for construction of Math. Sidhibai was the daughter of Haribhau Tawade alias Swamisut, a devotee of Shri Akkalkot Swami Maharaj. Shripati Nalawade was the son of Haribhau. Sidhibai married Shripati. After the death of Shripati, Sidhibai took Sanyas and assumed the name of Sidhibai Haribhau Nalawade.The Padukas were given by Shri Akkalkot Swami Maharaj to Shri Swamisut for puja. After the death of Shri Swamisut, Smt. Sidhibai used to have Puja of the said Padukas. She did not have means to construct the Math and carry on the expenses. As such, Narayan Ravate made a gift as aforesaid of the suit property in favour of Sidhibai. Smt. Sidhibai by making an appeal, to the public for donations, collected fund for construction of the said Math and the Chawl. One Mr. Kuverji Hormasji Plumber also donated an amount of Rs.4,500/- for the construction of the said Math. The plaintiff became owner of the Math and other properties in the precincts of the said Math by virtue of transfer in the revenue records effected on

29.11.1946. Since then, the plaintiff - Haribhau was in continuous possession of the suit property. It is he who is paying the Municipal and other taxes in respect of the suit property from his personal funds.

4. It is further alleged by the plaintiff that sometime in 1976, an officer from the office of the Charity Commissioner came for enquiry and asked the plaintiff to file an application before the Charity Commissioner for a declaration that the property was a private property. The Charity Commissioner accordingly made an enquiry and held that the property was belonging to a public trust. That order was challenged in the City Civil Court and then in the High Court. Therefore, the plaintiff has filed the suit for declaration that the suit property is a private property of the plaintiff.

5. During the pendency of the suit, the original plaintiff - Haribhau S. Nalawade expired and his heirs are brought on record.

6. The Defendants resisted the suit by filing Written Statement dated 20.5.1997. They denied the allegations made in the plaint. They contend that the entire property belonged to the trust. They denied that the plaintiff was the grandsom of Sidhibai. They

further contend that the property was gifted to ..l and not Sidhibai. They also contend that donation given by Kuvarji Hormasji Plumber was to the Math. As such, the following issues arise for my consideration against which I have recorded my findings :-

	ISSUES	**FINDINGS**
1.	Whether the plaintiff prove that the suit property is the private property of the Plaintiffs and not of Akkalkot Swami Maharaj Trust ?	In the affirmative.
2.	Whether it is proved by the Plaintiffs that they are the owner of the suit property and in continuous possession of the suit property as owners of the suit property for more than 40 years ?	In the affirmative.
3.	Does the Plaintiffs prove that alternatively the plaintiffs are the owners of the suit property even by adverse possession ?	Does not arise.
4.	Whether the plaintiffs prove that the Charity Commissioner registered the suit property as Trust property without considering the complicated question of title of property and the documents on record ?	In the affirmative.
5.	Whether defendants prove that the father of the Plaintiffs was not grand son of Smt.Sidhabai who has constructed the said Math ?	In the negative.
6.	Whether the defendants prove that Smt. Sidhabai Haribhau Tawade and	In the negative.

	Smt.Sitabai Shripati Nalawade is not the one and the same person ?	
7.	Whether the defendants prove that property in Gift Deed dated 4.10.1917 was gifted to deity and not in the name of Sitabai @ Sidhabai ?	In the negative.
8.	Whether the defendants prove that donations given by Mr. Kuverji Hormusji Plumber is said to be given for Math ?	In the negative.
9.	Whether Charity Commissioner has jurisdiction to try the issue pertaining to the registration of Trust if the Plaintiffs herein claimed the suit property as his private property ?	In the affirmative.
10.	What Order ?	Suit is decreed in terms of prayers (a), (b) & (c). No order as to costs.

ISSUE NO. 9:

7. So far as this issue is concerned, when the plaintiff had raised before the Charity Commissioner the issue that the property is the plaintiff's private property, the Charity Commissioner had no jurisdiction to decide that issue. The Charity Commissioner can only decide the issue whether the trust was a public trust or not. The Charity Commissioner, in fact, should have referred that issue to the Civil Court for deciding whether the property was private property or not. Therefore, this issue shall have to be answered in the affirmative.

ISSUE NOS. 1 TO 8 :

8. The plaintiffs have filed affidavit of evidence of Prakash H. Nalawade, son of original plaintiff, Shri Haribhau. In support, the plaintiffs have produced a Gift Deed dated 4.10.1970, copy of which is produced at Exhibit "E". The original gift deed is in Modi script. Reading of the translation of the Gift deed shows that the gift of the suit property was in favour of Sitabai who was Sanyasi. It is clarified in the evidence of the witness of the plaintiff that Sidhabai became Sitabai after she married to Shripati Nalawade. Therefore, there could not be dispute that this property was gifted to Sitabai who was Sanyasi. That gift was made by Narayan Ganpat Ravate who was the son. This document is dated 4.10.1917, this being the document admissible in evidence. This gift deed is a registered gift deed. Further copy of the document is dated 22.2.1932. By this document, Shri Kuvarji Hormusji Plumber had made a gift of Rs.4,500/- to Sidhabai, daughter of Haribhau. This letter also mentions that in the year 1917, Sidhabai built a Math actually dedicated to the said Sidhibai by a Gift Deed dated 4.10.1917 and that out of kindness and sympathy for such Sidhibai, with a view to enable her to complete the said building work of the said Math at

Chembur, he donated the said amount to her. This evidence also indicates that Sidhibai who had constructed the said Math and in the year 1932 the construction was completed. The notices of payment of land revenue were issued to Haribhau Nalawade, the plaintiff. Moreover, the property registered Sanad issued by the State Government, the revenue record dated 17.11.1945 which are produced at Exhibits "E", "G", "H" and "I" show that the suit property stood in the name of Haribhau. All those documents gone unchallenged clearly show that the entire property of the Math and the Chawl is owned by the plaintiffs' father, Haribhau and its inheritance by the plaintiffs.

9. Further it is also established that Haribhau was in possession of the entire property and he was paying taxes, etc.

10. As against this, there is no evidence led by the defendants in support of their claim. As such, I answer issue Nos. 1,2 and 4 in the affirmative. Issue no.3 does not arise and issues Nos. 5, 6, 7 and 8 in the negative.

11. The Suit is, therefore, decreed in terms of prayer clauses (a), (b) and (c). No order as to costs.

(S.K.SHAH,J.)